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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,650	03/15/2002	Bernhard Jakoby	10191/2310	7377
26646	7590	04/05/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			GARBER, CHARLES D	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/098,650

Applicant(s)

JAKOBY ET AL.

Examiner

Charles D. Garber

Art Unit

2856

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 11 February 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see attached.



Charles D. Garber
Primary Examiner
Art Unit: 2856

Information Disclosure Statement

The IDS filed 10/08/2003 has been considered. A copy initialed and signed by the Examiner is attached.

Appeal Brief

On February 11, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR 41.37(c). However, a review of the Appeal Brief reveals that it is not in compliance with the new rules under 37 CFR 41.37(c), which states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section.

A review of the appellant's Appeal Brief reveals that the following required appendices are missing:

37 CFR 41.37(c)(1)(ix), which is identified in the new rules as:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 41.33 for treatment of evidence submitted after appeal. This appendix may also include 'copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

and

37 CFR 41.37(c)(1)(x), which is identified in the rules as:

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Art Unit: 2856

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See j 1.1 16 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and j 41.33 for amendments, affidavits or other evidence filed after the date of the appeal .

Section 37 CFR 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAL" Final Rule at: <http://uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

It should be noted that the required filing fee for the Appeal Brief was authorized, but not charged against the deposit account.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 8:00 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2856

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles D. Garber
Primary Examiner
Art Unit 2856



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